IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1173 OF 2006

Pramod N.Anaokar & Anr. ..Petitioners

Vs.

Rajesh Dattatray Deshmukh & Ors. ..Respondents

Mr.R.S.Datar for the petitioners

Mr.K.S.Patil i/b P.N.Joshi for the respondent nos.1 to 7

CORAM : A.P.DESHPANDE, J

DATED : 29TH NOVEMBER, 2006

P.C.:

1. The respondent no.1 to 7 herein instituted Regular Civil Suit No.19 of 2005 against the petitioners and respondent no.8 to 12 for a declaration that the Sale Deed dt.24.12.04 executed in respect of plot of land, described as suit land, is illegal and that the plaintiffs continue to be the owners of the suit land. In the said suit, summonses issued to defendant no.1, 2 and 7 were returned unserved and on account of failure to take steps within the prescribed period as provided in

Order IX Rule 5 of the Code of Civil Procedure, suit came to be dismissed against the present petitioners (defendant nos.1, 2 and 7).

2. On an application moved before the trial court by the original plaintiffs, pointing out sufficient cause for their failure to take timely steps for reissuance of summonses as is envisaged under Order IX Rule 5 of the C.P.C., as amended by Bombay Amendment which provides 2 months time instead of 7 days, the trial court has allowed the application in the interest of Justice and with a view to seek adjudication of the issues on merit. It is obvious that if the order of dismissal of the suit against defendant no.1, 2 and 7 would not have been set aside, the same would have resulted in multiplicity of litigation and/or miscarriage of justice. The learned counsel for the petitioner has placed reliance on a decision in the case of Devidas Ganpatrao Kulkarni vs. Upendrarao Madhavrao Dhopeshwarkar & another reported in 2001 (Supp.2) BOM.C.R. 412.

3. Taking overall view of the matter, the

application filed by the original plaintiffs was allowed and order of dismissal of suit against defendant nos.1, 2 and 7 came to be set aside by the trial court.

4. I have perused the order. The order takes a pragmatic view of the matter, bearing in mind that the procedure is not meant for defeating the cause of justice.

5. The learned counsel for the petitioner has submitted that the application moved by the present petitioner was beyond the time prescribed by Order IX Rule 5 of the C.P.C.and he raises a question as to whether could that time be extended by the court. Assuming that the said argument is correct and that impugned order is not perfectly legal, still the same does not call for interference in exercise of Jurisdiction under Article 227 of the Constitution of India, as the said order is a right order aimed at achieving the right object. In the result, I decline to exercise discretion in favour of the preset petitioner and dismiss the writ petition summarily.

(SHRI A.P.DESHPANDE, J)